

REMARKS

Applicant has carefully reviewed this Application in light of the Election/Restriction Requirement mailed February 6, 2008. Claims 1-52 are pending in this Application. Claims 1-52 are subject to the election or restriction requirement.

The Examiner required an election of the following patentably distinct species:

Species A: Represented by Figure 7a;

Species B: Represented by Figure 7b.

Applicant hereby provisionally elects with traverse to prosecute Species A as the species for immediate examination pursuant to the species restriction requirement also set forth by the Examiner. Applicant submits that Claims 1-52 are readable on the provisionally elected species. Applicant reserves the right to request consideration of non-elected species in the present application upon allowance of a generic claim.

Notwithstanding Applicant's provisional election to prosecute Species A as the species for immediate examination, Applicant traverses the Examiner's restriction requirement on the ground that restriction is improper because the Examiner has failed to demonstrate that an election among species is appropriate in the present case. As mandated in the Manual of Patent Examining Procedure, an examiner requirement to restrict must include:

- (A) the reasons (as distinguished from the mere statement of conclusion) why each invention *as claimed* is either independent or distinct from the others; and
- (B) the reasons why there would be a serious burden on the examiner if restriction was not required, i.e., the reasons for insisting upon restriction therebetween ...

(M.P.E.P. § 808; *see also* M.P.E.P. § 803(I)).

In the present case, the Examiner has not set forth *any* reasons why the different species are either independent or distinct from each other, but instead provided a mere statement of conclusion that Species A and Species B were directed towards patentably distinct species. In addition, the Examiner failed to set forth any reasons why there would be

a serious burden on the Examiner if restriction was not required. Applicant respectfully refers Examiner to M.P.E.P. § 808.02 for the requirements of establishing the required burden.

Applicant also traverses the Examiner's assertion that none of the claims are generic. To the contrary, Applicant has reviewed each of Claims 1-52 in detail and submits that all Claims 1-52 read on the embodiment depicted in Figure 7(a) as well as the embodiment depicted in Figure 7(b). For at least these reasons, each of Claims 1-52 meets the definition of a "generic" claim for purposes of election/restriction practice, thus rendering the election/restriction requirement improper as none of the claims are specifically directed to either of Species A or Species B.

For at least the reasons set forth above, Applicants respectfully request withdrawal of the election/restriction requirement, and full examination of consideration of all Claims 1-52.

Change of Correspondence Address

Applicant respectfully requests that all papers pertaining to the above-captioned patent application be directed to Customer No. **31625** and all telephone calls should be directed to Brian Prewitt at 512.322.2684.

CONCLUSION

Applicant appreciates the Examiner's careful review of the application. Applicant has made an earnest effort to place this case in condition for examination and allowance. For the foregoing reasons, Applicant respectfully requests reconsideration of the application and allowance of elected claims.

Applicant authorizes the Commissioner to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P. to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.322.2684.

Respectfully submitted,

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